

ORIGINAL

Attorney or Party Name, Address, Telephone, FAX Numbers, and California State Bar Number Peter Susi, Esq., Bar No. 62957 Michaelson, Susi & Michaelson 7 West Figueroa Street, 2nd Floor Santa Barbara, CA 93101 (805) 965-1011	FOR CO. USE ONLY <div style="border: 2px solid black; padding: 5px; text-align: center;"> <b>FILED</b>  <b>MAY 12 2006</b>  <small>Clerk, U.S. Bankruptcy Court          Central District of California          Deputy Clerk</small> </div>
<b>UNITED STATES BANKRUPTCY COURT          CENTRAL DISTRICT OF CALIFORNIA</b>	
In re: AUSTIN B. WHITNEY and JUDITH D. WHITNEY,  <div style="text-align: right;">Debtor(s).</div>	CASE NO.: ND 08-12595-RR

**NOTICE OF SALE OF ESTATE PROPERTY**

<b>Sale Date:</b> Two business days after court authorizes sale.	<b>Time:</b> N/A
<b>Location:</b> N/A	

Type of Sale:  Public  Private Last date to file objections: 5/29/06

Description of Property to be Sold: SEE ATTACHED

Terms and Conditions of Sale: SEE ATTACHED

Proposed Sale Price: SEE ATTACHED

Overbid Procedure (If Any): N/A

If property is to be sold free and clear of liens or other interests, list date, time and location of hearing:

Contact Person for Potential Bidders (include name, address, telephone, fax and/or e:mail address):

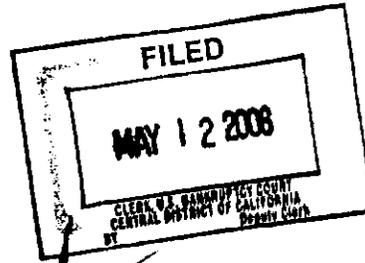
PETER SUSI, ESQ.  
 MICHAELSON, SUSI & MICHAELSON  
 7 WEST FIGUEROA STREET, SECOND FLOOR  
 SANTA BARBARA, CA 93101  
 (805) 965-1011; (805) 965-7351 (FAX) peter@msmlaw.com

Date: 5/12/06

1 MICHAELSON, SUSI & MICHAELSON

(SPACE BELOW FOR FILING STAMP ONLY)

2 A Professional Corporation  
3 ATTORNEYS AT LAW  
4 SEVEN WEST FIGUEROA STREET, SECOND FLOOR  
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6 Telephone: (805) 965-1011  
7 Facsimile: (805) 965-7351  
8 Peter Susi, Bar No. 62957



9 Attorneys for Debtors and Debtors-in-Possession

10  
11 **UNITED STATES BANKRUPTCY COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA, NORTHERN DIVISION**  
13

14 In re ) BK No. ND 03-12595-RR  
15 )  
16 AUSTIN B. WHITNEY and JUDITH ) Chapter 11  
17 D. WHITNEY, )  
18 Debtors. ) MOTION FOR ORDER AUTHORIZING  
19 ) DEBTORS AND DEBTORS-IN-  
20 ) POSSESSION TO SELL INTEREST  
21 ) IN REAL PROPERTY; MEMORANDUM  
22 ) OF POINTS AND AUTHORITIES AND  
23 ) DECLARATION OF IRA J. WALDMAN  
24 )  
25 ) [Notice of this Motion was Given  
26 ) Pursuant to Local Bankruptcy Rule  
27 ) 9013(1)(g)(1)(A)]  
28 )  
29 ) No Hearing  
30 )

31  
32 TO THE HONORABLE ROBIN L. RIBLET, UNITED STATES BANKRUPTCY  
33 JUDGE:

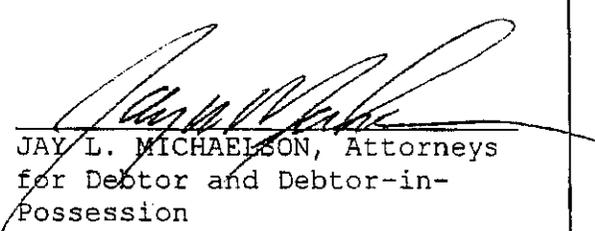
34 Austin B. Whitney and Judith D. Whitney, Debtors and  
35 Debtors-in-Possession ("Debtors"), hereby move this court for  
36 an order authorizing them to sell Debtor Austin B. Whitney's  
37 interest in a parcel of real property pursuant to the  
38 transaction referred to below.

1 This motion is made pursuant to the provisions of 11  
2 U.S.C. § 363(b)(1) and is based upon this motion, the  
3 Memorandum of Points and Authorities, and Declaration of Ira J.  
4 Waldman.

5 Notice of this motion has been given to the United States  
6 Trustee, creditors, all parties requesting special notice, and  
7 other parties in interest pursuant to the provisions of Local  
8 Bankruptcy Rule 9013-1(g)(1)(A). A copy of the Declaration of  
9 Service of the Notice of the Motion is attached hereto as  
10 Exhibit "A."

11 DATED: May 11, 2005.

12 MICHAELSON, SUSI & MICHAELSON  
13 A Professional Corporation

14  
15 By   
16 JAY L. MICHAELSON, Attorneys  
17 for Debtor and Debtor-in-  
18 Possession

19 MEMORANDUM OF POINTS AND AUTHORITIES

20 1. Movants are the Debtors and Debtors-in-Possession in  
21 this Chapter 11 case commenced by a voluntary Chapter 11  
22 petition on September 18, 2003.

23 2. Among the assets of this estate is Debtor Austin B.  
24 Whitney's one-eighth undivided interest in an undivided  
25 65.15291% interest in a parcel of real property located in the  
26 City and County of Los Angeles, State of California, legally  
27 described as follows:  
28

1 The southeasterly 55 feet of Lot 3, measured along  
2 the southwesterly line thereof in Block 11 of San  
3 Vicente Park, in the City of Los Angeles, in the  
4 County of Los Angeles, State of California, as per  
map recorded in Book 12, Pages 62 and 63 of Maps, in  
the office of the County Recorder of said County.

5 (hereinafter referred to as the "Property").

6 3. The Property is subject to a Ground Lease dated  
7 September 8, 1981. A Memorandum of said Lease was recorded  
8 November 13, 1981, as Instrument No. 81-1121288 in Official  
9 Records of Los Angeles County, California (the "Lease").

10 4. The Lease grants the lessee an option to purchase the  
11 Property. The Restated Second Amendment to Lease, a copy of  
12 which is attached hereto as Exhibit "B", sets forth the  
13 mechanism for determining the purchase price in the event that  
14 the lessee exercised the option to purchase.

15 5. The lessee has exercised its option to purchase the  
16 Property.

17 6. Pursuant to Paragraph 3 of the Restated Second  
18 Amendment to Lease, the lessor and lessee had the Property  
19 appraised. Because the lessor and lessee were unable to  
20 reconcile the difference between their appraisals, a third  
21 appraiser was engaged as provided for in Paragraph 3 of the  
22 Restated Second Amendment to Lease.

23 7. The third appraiser selected by the lessee and lessor  
24 and lessee's appraiser issued a concurrence letter establishing  
25 the value of the Property at \$1,100,000. Pursuant to the Lease  
26 and amendments thereto, the lessors are required to sell the  
27 Property to the lessees for \$1,100,000.

28

1           8.    The terms of the proposed sale are set forth in a  
2 Purchase Agreement and Escrow Instructions, a copy of which is  
3 attached hereto as Exhibit "C".

4           9.    Debtors are informed and believe, and based upon such  
5 information and belief, allege that the sale of the Debtor  
6 Austin B. Whitney's interest in the Property is in accordance  
7 with the Lease and amendments thereto, and that Austin B.  
8 Whitney is required by the terms of the Lease and amendments  
9 thereto to join with the other lessors in consummating the  
10 sale. Debtors further believe that the sale is in the best  
11 interests of this estate and its creditors in that the cash  
12 generated by the sale will assist the Debtors in their efforts  
13 to propose and confirm a Chapter 11 plan of reorganization.

14           10. The court may authorize the sale of the Property  
15 pursuant to the provisions of 11 U.S.C. § 363(b)(1) and may  
16 authorize Debtor Austin B. Whitney to take whatever action is  
17 necessary to consummate the proposed sale.

18           WHEREFORE, movants pray for an order of this court:

19           1.    Authorizing movants, as Debtors and Debtors-in-  
20 Possession, to sell Austin B. Whitney's interest in the real  
21 property described in paragraph 2 above pursuant to the terms  
22 and conditions of the Purchase Agreement and Escrow  
23 Instructions attached hereto as Exhibit "C";

24           2.    Authorizing Debtor Austin B. Whitney to execute any  
25 and all documents and take whatever action is necessary to  
26 consummate the proposed sale;

27           3.    For a waiver of the ten-day period provided for in  
28 Federal Rule of Bankruptcy Procedure 6004(g);

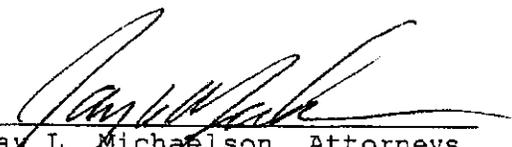
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4. For a finding that the proposed buyer is a good faith purchaser within the meaning of § 363(m); and

5. For such other and further relief as the court deems just and proper.

DATED: May 11, 2006.

MICHAELSON, SUSI & MICHAELSON  
A Professional Corporation

By   
Jay L. Michaelson, Attorneys  
for Debtors and Debtors-in-  
Possession

DECLARATION OF IRA J. WALDMAN

I, Ira J. Waldman, declare as follows:

1. I am an attorney licensed to practice law in the State of California and a principal in the firm of Cox, Castle & Nicholson, LLP, 2049 Century Park East, 28th Floor, Los Angeles, California 90067-3284.

2. Cox, Castle & Nicholson, LLP, are the attorneys for Wells Fargo Bank, N.A., as Co-Trustee for the Austin M. Barnard Residuary Trust Created Under the Will of Austin M. Barnard, Deceased, in Santa Barbara County Superior Court Case No. 98487 ("Wells Fargo, Co-Trustee"). I am the attorney directly responsible for the matters referred to herein and have personal knowledge thereof.

3. Wells Fargo, Co-Trustee, owns an undivided 34.84709% interest in a parcel of real property located in the City and County of Los Angeles legally described as follows:

The southeasterly 55 feet of Lot 3, measured along the southwesterly line thereof in Block 11 of San Vicente Park, in the City of Los Angeles, in the County of Los Angeles, State of California, as per map recorded in Book 12, Pages 62 and 63 of Maps, in the office of the County Recorder of said County.

4. The Property is subject to a Ground Lease dated September 8, 1981. A Memorandum of said Lease was recorded November 13, 1981, as Instrument No. 81-1121288 in Official Records of Los Angeles County, California (the "Lease").

5. The Lease grants the lessee an option to purchase the Property. The Restated Second Amendment to Lease, a copy of which is attached to the Motion as Exhibit "B", sets forth the

1 mechanism for determining the purchase price in the event that  
2 the lessee exercised the option to purchase.

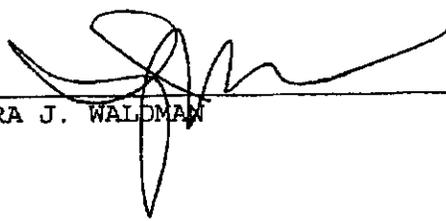
3 6. The lessee has exercised its option to purchase the  
4 Property.

5 7. Pursuant to Paragraph 3 of the Restated Second  
6 Amendment to Lease, the lessor and lessee had the Property  
7 appraised. Because the lessor and lessee were unable to  
8 reconcile the difference between their appraisals, a third  
9 appraiser was engaged as provided for in Paragraph 3 of the  
10 Restated Second Amendment to Lease.

11 8. The third appraiser selected by the lessee and lessor  
12 and lessee's appraiser issued a concurrence letter establishing  
13 the value of the Property at \$1,100,000. Pursuant to the Lease  
14 and amendments thereto, the lessors are required to sell the  
15 Property to the lessees for \$1,100,000.

16 I declare under penalty of perjury that the foregoing is  
17 true and correct.

18 Executed this 11<sup>th</sup> day of May, 2006, at Santa Barbara,  
19 California.

20  
21   
22 \_\_\_\_\_  
23 IRA J. WALDMAN  
24  
25  
26  
27  
28



Office of the U.S. Trustee  
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Jacksonville, FL 32255-1080

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Santa Barbara, CA 93103

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LA District Western Region  
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Los Angeles, CA 90012

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Santa Barbara, CA 93102-0579

Mrs. John Voorhees  
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Santa Barbara, CA 93103

Washington Mutual  
PO Box 60800  
Los Angeles, CA 90060-0800

Washington Mutual  
9451 Corbin Avenue N010204  
Northridge, CA 91324

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

ALEXANDER FURLOTTI  
QUORUM PROPERTIES  
12121 WILSHIRE BOULEVARD  
SUITE 950  
LOS ANGELES, CA 90025

MAIL TAX STATEMENTS AS DIRECTED ABOVE

DOCUMENTARY TRANSFER TAX \$ NONE  
-COMPUTED ON FULL VALUE OF  
PROPERTY CONVEYED  
-OR COMPUTED ON FULL VALUE LESS  
LIENS AND ENCUMBRANCES REMAINING  
AT TIME OF SALE  
*[Signature]*  
Signature of Declarant or Agent  
determining tax. Firm Name  
LEASE COMMENCED PRIOR TO  
10/12/84

RESTATED SECOND AMENDMENT TO LEASE

FEE \$ 21 - V

9

1. Parties.

This Restated Second Amendment to Lease (the "Amendment"), dated for reference purposes only December 1, 1988, is made by and between FIRST INTERSTATE BANK OF CALIFORNIA, a California corporation, CHARLES M. BARNARD, JACK D. BARNARD and PATRICIA WHITNEY, as Trustees under the Residuary Trust of the Will of Austin M. Barnard, deceased, FIRST INTERSTATE BANK OF CALIFORNIA, a California corporation, and AUSTIN B. WHITNEY, as Trustees under the Residuary Trust of the Will of Mary E. Barnard, deceased, AUSTIN B. WHITNEY, ANNABELLA WHITNEY, RANDOLPH J. BARNARD, MARILYN B. HARDING, JUDY B. FRAZIER, JACK D. BARNARD, JR., TIMOTHY B. WHITNEY and CHARLES C. BARNARD (collectively "Landlord") and ALEX FURLOTTI, an individual ("Tenant").

2. Recitals.

2.1 Landlord and Tenant are the successors in interest to the lessor's and lessee's interest, respectively, under that certain Lease dated September 8, 1981 (the "Lease"), of which a Memorandum was recorded November 13, 1981, as Instrument No. 81-1121288 in the Official Records of Los Angeles County, California.

2.2 Landlord and Tenant desire to amend the Lease upon and subject to the terms, conditions and provisions hereinafter set forth.

2.3 A Second Amendment To Lease, recorded on June 10, 1988, contained a typographical error; namely, the following text was inadvertently deleted from the body of Paragraph 3 of the execution draft: ". If the highest and best use of the Demised Premises", starting at the end of line 21 at page 2 thereof. This amendment adds the missing text.

3. Amendment to Lease.

Section 14.2 of the Lease is hereby deleted in its entirety and the following inserted in place thereof:

"Purchase Price. In the event Tenant exercises the option herein granted, the Purchase Price of the Demised Premises shall be its then fair market value exclusive of any improvements thereon at the date of exercise of the option as agreed upon by Landlord and Tenant.

Following the date of such exercise of the option herein granted, the fair market value shall be determined as of the date of exercise of such option by appraisal of the Demised Premises, but exclusive of any improvements on the Demised Premises; provided, however, that in no event shall such fair market value exceed the greater of: (a) the fair market value the Demised Premises would then have had had the Demised Premises retained the zoning restrictions and classification existing on the Demised Premises as of September 8, 1981, or (b) the fair market value the Demised Premises would then have had had the Demised Premises retained those restrictions and classifications on the Demised Premises as outlined in the Brentwood Community Development Plan existing as of September 8, 1981, and the appraisers are to assume such restrictions in determining the highest and best use of the Demised Premises.

the value of the Demised Premises, exclusive of improvements, as though it were developable with only five (5) units and ten (10) parking spaces without reference to its actual unit count and the right to use that portion of the Adjacent Parking Spaces located within the Developer Lots; (b) the value of the Demised Premises, exclusive of improvements, as though it were developable with nine (9) units less (meaning taking into consideration) the cost of constructing subterranean parking for the additional eight (8) parking spaces needed and without reference to the right to use that portion of the Adjacent Parking Spaces located within the Developer's Lots; or (c) the value of the Demised Premises, exclusive of improvements, as though it were developable with nine (9) units less (meaning taking into consideration) the use value of the right to use that portion of the Adjacent Parking Spaces located within the Developer's Lots.

For purposes of this, the term "adjacent parking spaces" is taken from the Reciprocal Easement Agreement of even date herewith, which such term, as defined in the said Reciprocal Easement Agreement is incorporated herein by reference.

The appraisal of the fair market value of the Demised Premises shall be set forth in a letter appraisal report, fully documented with all available comparable and other similarly relevant data, provided that the written report need not include any demographic information.

Appraisers shall be appointed and proceed as follows:

(i) Not later than four (4) months following Tenant's exercise of said option, Landlord and Tenant shall each select and appoint a member of the Southern California Chapter of the American Institute of Real Estate Appraisers holding MAI credentials and give notice of such selection and appointment to the other party. The appraisers so selected shall select and appoint a third appraiser similarly qualified. The expenses and charges of the two appraisers appointed by the party shall be paid by the party who appointed such appraiser and the expenses of the third appraiser shall be borne equally by Landlord and Tenant. No appraiser shall be deemed to have been employed by the party designating such appraiser but each appraiser shall be deemed to represent both Landlord and Tenant for purposes of appraisal of the fair market value of the Demised Premises determined in accordance with the preceding paragraph.

(ii) A determination concurred in by two of the three appraisers shall constitute an effective determination of the fair market value of the Demised Premises."

4. No Other Charges.

As expressly amended hereby, the Lease is unchanged and shall continue in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this Restated Second Amendment to Lease on the date and at the place set forth opposite their signatures.

"LANDLORD"

FIRST INTERSTATE BANK OF CALIFORNIA, a California corporation, Trustee under the Residuary Trust of the Will of AUSTIN M. Barnard, Deceased

By: Paul Vogel

By: John N. Baker

Charles M. Barnard  
Charles M. Barnard, Trustee under the Residuary Trust of the Will of Austin M. Barnard, Deceased

**PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS**

by and between

**WELLS FARGO BANK, N.A., ("Wells Fargo"), PATRICIA WHITNEY AND JACK D. BARNARD, AS  
CO-TRUSTEES FOR THE AUSTIN M. BARNARD RESIDUARY TRUST, AUSTIN B. WHITNEY,  
ANNABELLA C. WHITNEY, RANDOLPH J. BARNARD, MARILYN J. HARDING, JACK D. BARNARD,  
JR. AS TRUSTEE OF THE JACK D. BARNARD, JR. TRUST, A REVOCABLE LIVING TRUST DATED  
JULY 11, 1995, TIMOTHY B. WHITNEY, CHARLES C. BARNARD AND WELLS FARGO AND AUSTIN  
B. WHITNEY, AS CO-TRUSTEES FOR THE MARY E. BARNARD RESIDUARY TRUST**

**("Seller")**

and

**BIG OAK INVESTMENTS 2, LLC, a California limited liability company**

**("Buyer")**

**EXHIBIT " C "**

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## PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

THIS PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS (this "Agreement") is made and entered into as of May \_\_, 2006 (the "Effective Date"), by and between WELLS FARGO BANK, N.A., ("Wells Fargo"), PATRICIA WHITNEY AND JACK D. BARNARD, AS CO-TRUSTEES FOR THE AUSTIN M. BARNARD RESIDUARY TRUST (THE "AUSTIN BARNARD TRUST"), AUSTIN B. WHITNEY, ANNABELLA C. WHITNEY, RANDOLPH J. BARNARD, MARILYN J. HARDING, JACK D. BARNARD, JR. AS TRUSTEE OF THE JACK D. BARNARD, JR. TRUST, A REVOCABLE LIVING TRUST DATED JULY 11, 1995, TIMOTHY B. WHITNEY, CHARLES C. BARNARD AND WELLS FARGO AND AUSTIN B. WHITNEY, AS CO-TRUSTEES FOR THE MARY E. BARNARD RESIDUARY TRUST (THE "MARY BARNARD TRUST") (collectively, "Seller"), and BIG OAK INVESTMENTS 2, LLC, a California limited liability company ("Buyer"). Seller and Buyer are hereinafter sometimes individually referred to as a "party" and collectively as the "parties".

### RECITALS

- A. Seller is the owner of certain land more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Property").
- B. Buyer is the current lessee of the Property pursuant to that certain Indenture of Lease made as of September 8, 1981, as amended (the "Lease").
- C. Pursuant to the Lease, Buyer had an Option to Purchase the Property.
- D. Buyer has exercised its option and in order to consummate the sale of the Property, Seller and Buyer enter into this Agreement to so consummate the sale in accordance with the terms, provisions and conditions set forth herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the Recitals set forth above, and the mutual promises, covenants, conditions and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

#### 1. PURCHASE AND SALE

1.1 Purchase and Sale. Subject to the terms, provisions and conditions set forth in this Agreement, Seller agrees to sell the Property to Buyer, and Buyer agrees to purchase the Property from Seller.

#### 1.2 Purchase Price.

1.2.1 The total purchase price for the Property (the "Purchase Price") determined pursuant to that certain Restated Second Amendment to Lease dated December 1, 1988 between Seller and Buyer's predecessor in interest is One Million One Hundred Thousand Dollars (\$1,100,000). Notwithstanding Seller's entering into this Agreement and closing the transaction subject hereto, such closing is under protest and with a reservation of all rights under the Restated Second Amendment and otherwise with respect to the determination of the Purchase Price. This reservation of rights shall survive the Close of Escrow for all purposes.

#### 1.3 Payment of Purchase Price. The Purchase Price shall be payable as follows:

1.3.1 Cash Payment at Closing. No later than one (1) Business Day prior to the Close of Escrow, Buyer shall deposit with Escrow Holder, by wire transfer of immediately available funds, the Purchase Price (the "Closing Cash Payment").

## 2. OPENING OF ESCROW

Concurrently with the mutual execution of this Agreement, Seller and Buyer shall open an escrow (the "**Escrow**") with First American Title Insurance Company ("**Escrow Holder**", or sometimes the "**Title Company**") by delivering an executed copy of this Agreement to Escrow Holder. As used in this Agreement, the term "**Opening of Escrow**" shall mean the date upon which a fully executed copy of this Agreement is delivered to Escrow Holder by Seller and Buyer. Upon receipt of the executed Agreement, Escrow Holder is hereby instructed to open the Escrow, to advise the parties of the date of the Opening of Escrow by filling out the last page of this Agreement designated as "**Consent**", and to deliver a signed copy of the last page of this Agreement to both Seller and Buyer. Buyer and Seller hereby agree that a fully executed copy of this Agreement shall constitute escrow instructions to Escrow Holder, together with any additional instructions consistent with the terms of this Agreement that Escrow Holder may reasonably request. Buyer and Seller hereby agree to promptly execute and deliver any such instructions as may be requested by Escrow Holder. In the event of any conflict or inconsistency between such additional escrow instructions requested by Escrow Holder and the provisions of this Agreement, the provisions of this Agreement shall control.

## 3. CONDITIONS TO CLOSE OF ESCROW

3.1 Conditions for the Benefit of Buyer. Buyer's obligation to acquire the Property, and the Close of Escrow, shall be conditional and contingent upon the satisfaction, or waiver by Buyer, as and when required below, of each of the following conditions, as applicable (collectively, the "**Buyer Conditions**"):

3.1.1 Representations and Warranties. The representations and warranties of Seller set forth in Section 5 below shall be true and correct in all material respects as of the Close of Escrow, subject to any modifications thereto accepted or deemed accepted by Buyer as provided in Section 5 below.

3.1.2 Seller's Deliveries. As of the Close of Escrow, Seller shall have deposited all documents into Escrow required to be deposited by Seller pursuant to Section 4.2 below with respect to the Close of Escrow.

3.1.3 Title Insurance. Escrow Holder shall be committed to issue to Buyer, as of the Close of Escrow, a CLTA Standard Owner's Policy of Title Insurance, with liability limits equal to the Purchase Price, insuring fee title to the Property as being vested in Buyer, subject to such title exceptions as shall exist as of the Close of Escrow other than liens created by Seller (the "**Title Policy**"). Buyer shall have the right to obtain an ALTA Extended Coverage Owner's Policy of Title Insurance in lieu of the CLTA Standard Owner's Policy of Title Insurance, provided (i) Buyer pays all excess costs in connection therewith and in the obtaining of any necessary survey(s), and (ii) the substitution of such ALTA Extended Coverage Owner's Policy does not affect in any way the date for the Close of Escrow set forth in this Agreement.

3.2 Failure of Buyer Conditions. If any of the Buyer Conditions with respect to the Property has not been satisfied as of the Close of Escrow, then Buyer shall have the right, in the exercise of Buyer's sole and absolute discretion, (a) to waive such Buyer Condition as a condition precedent to the Close of Escrow, by written notice given to Seller and Escrow Holder prior to the Closing Date, provided, that Buyer shall be deemed to have waived such Buyer Condition without written notice if Buyer proceeds to the Close of Escrow in accordance with this Agreement, or (b) to terminate this Agreement by written notice of termination delivered to Seller and to Escrow Holder. In the event of Buyer's termination of this Agreement, neither party shall have any further rights, duties or obligations under this Agreement as to the Property, except with respect to those obligations which by their terms survive the termination of this Agreement.

3.3 Conditions for the Benefit of Seller. Seller's obligation to sell the Property and to Buyer, and the Close of Escrow, shall be conditional and contingent upon the satisfaction, as and when required below, of each of the following conditions, as applicable (the "Seller Conditions"):

3.3.1 Buyer's Deliveries. As of the Close of Escrow, Buyer shall have deposited all funds and documents into Escrow required to be deposited by Buyer pursuant to Section 4.3 below with respect to the Close of Escrow.

3.4 Failure of Seller Conditions. If any of the Seller Conditions with respect to the Property has not been satisfied as of the Close of Escrow, then Seller shall have the right (a) to waive such Seller Condition as a condition precedent to the Close of Escrow, by written notice given to Buyer and Escrow Holder prior to the applicable Closing Date, or (b) to terminate this Agreement. In the event of Seller's termination of this Agreement as set forth in the immediately preceding sentence by reason of the failure of any of the Seller Conditions applicable to the Property, the Deposit shall be retained by Seller and neither party shall have any further rights, duties or obligations under this Agreement, except with respect to those obligations which by their terms survive the termination of this Agreement. Notwithstanding the foregoing, in the event a Seller Condition is not satisfied (and is not waived by Seller) within the time set forth above by reason of a Buyer Default, after the expiration of any notice and cure period with respect thereto, Seller shall have the rights and remedies by reason thereof available to Seller pursuant to the provisions of Section 7.1 below.

#### 4. CLOSE OF ESCROW

4.1 Close of Escrow. For purposes of this Agreement, the terms "Closing" and "Close of Escrow" shall mean and refer to the recordation in the Official Records of the County of Seller's "Grant Deed" (as that term is defined in Section 5.2.1 below) conveying title to the Property to Buyer. The Closing Date for the sale of the Property shall take place through Escrow on or before 5:00 p.m. Los Angeles time on or before July 2, 2006, the sixtieth (60th) day following the determination of the Purchase Price, so long as all Seller Conditions and Buyer Conditions have been satisfied (or expressly waived in writing by the applicable party hereto). The Closing for the sale of the Property is intended to take place on or before May 10, 2006, provided however that due to the logistical issues involved in obtaining the signatures of all of the parties constituting Seller to all of the documents required to consummate the Closing, and the fact that Austin B. Whitney is the subject of a voluntary bankruptcy proceeding in the U.S. Bankruptcy Court for the Central District of California (Bankruptcy Petition No. 9:03-bk-12595-RR) (the "Whitney Bankruptcy") as a result of which an order of the Bankruptcy Court will be required to permit Austin B. Whitney to execute the Grant Deed, the Closing shall occur no later than two business days following the receipt of the Bankruptcy Court order authorizing sale (the "Bankruptcy Court Order").

4.2 Deliveries by Seller to Escrow Holder. Seller hereby covenants and agrees to deliver to Escrow Holder, at least one (1) Business Day prior to the Closing, the following instruments and documents, the delivery of each of which shall be a condition to the Close of Escrow for the benefit of Buyer:

4.2.1 Grant Deed. Seller's grant deed conveying fee title to the Property in the form of Exhibit B attached hereto and incorporated herein by this reference (the "Grant Deed"), duly executed and acknowledged by Seller.

4.2.2 Non-Foreign Certificate. An affidavit satisfying the requirements of Section 1445 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder, duly executed by Seller (the "Certificate of Non-Foreign Status").

4.2.3 California Certification. If applicable, a California Franchise Tax Board Form 593(W) to satisfy the requirements of California Revenue and Taxation Code Section 18662, duly executed by Seller (the "Exemption Certificate").

4.2.4 Closing Costs. Seller's portion of the Escrow fees, proration, and other charges relating to the Closing shall be deducted from the amount due Seller at the Close of Escrow, and therefore Seller shall have no obligation to deposit any additional amount in payment of such fees, proration and other charges, except to the extent that the amount due Seller at the Close of Escrow is not sufficient to cover such items.

4.2.5 Other Documents. All other documents required hereunder or otherwise reasonably required by Escrow Holder to be deposited by Seller to close the Escrow.

4.3 Deliveries by Buyer to Escrow Holder. Buyer hereby covenants and agrees to deliver to Escrow Holder, at least one (1) Business Day prior to the Closing, the following items, the delivery of each of which shall be a condition to the Close of Escrow for the benefit of Seller:

4.3.1 Closing Cash Payment. The Closing Cash Payment, in immediately available funds, in accordance with Section 1.3.1.

4.3.2 Closing Costs. All funds necessary to pay Buyer's share of the closing costs and proration pursuant to this Agreement.

4.3.3 Other Documents. All other documents required hereunder or otherwise reasonably required by Escrow Holder to be deposited by Buyer to close the Escrow for the Property.

4.4 Disbursements and Other Actions by Escrow Holder at the Closing. Upon the Closing, and when all required funds and documents have been deposited into Escrow by the appropriate parties, Escrow Holder shall promptly undertake all of the following in the following order:

4.4.1 Cause the Grant Deed for the Property (with documentary transfer tax information to be affixed after recording) to be recorded in the Official Records of the County where the Property is located.

4.4.2 Disburse all funds deposited in payment of the Closing Cash Payment and in payment of Buyer's share of any Escrow closing costs and proration, as follows:

(a) Deduct from the funds deposited with Escrow Holder by Buyer all items chargeable to the account of Seller, including, without limitation, the amount of any deeds of trust, mechanic's liens or other monetary encumbrances to be paid by Seller, and Seller's share of any Escrow closing costs and proration;

(b) Disburse the balance of such funds, up to the amount of the Closing Cash Payment less the amount deducted in Section 4.4.2(a) above, as directed by Seller promptly upon the Close of Escrow. Any funds deposited by or on behalf of Seller in excess of Seller's share of any Escrow closing costs and proration shall be disbursed to Seller; and

(c) Deduct from the funds deposited with Escrow Holder by Buyer in payment of Buyer's share of any Escrow closing costs and proration the amount of all such items chargeable to the account of Buyer hereunder, and return the excess of such funds, if any, to Buyer.

4.4.3 Deliver the Certificate of Non-Foreign Status and the Exemption Certificate and the other documents described in Section 4.2 to Buyer.

4.4.4 Cause the Title Policy described in Section 3.1.3 above to be delivered to Buyer.

4.5 Escrow Cancellation Charges. If the Closing fails to occur due to a Seller Default, Seller shall pay all Escrow cancellation charges. If the Closing fails to occur due to a Buyer

Default, Buyer shall pay all Escrow cancellation charges. If either Closing fails to occur for any reason other than the foregoing, Buyer and Seller shall each pay one-half (1/2) of any Escrow cancellation charges. "Escrow cancellation charges" means all fees, charges and expenses of Escrow Holder hereunder and all fees, charges and expenses related to the services of Escrow Holder in its capacity as the title company in connection with the issuance of the Title Report and other title matters hereunder.

#### 4.6 Costs and Prorations.

4.6.1 Escrow and Other Costs. Subject to Section 4.5 above, Buyer and Seller shall each pay one-half (1/2) of Escrow Holder's escrow fees for the Escrow. Seller shall bear the cost of all documentary transfer taxes and the cost of the Title Policy described in Section 3.1.3 above. Buyer shall pay the additional cost of any extended coverage (including without limitation any additional survey cost), ALTA, ALTA lender's or other title policy in excess of the cost of the Title Policy, including the cost of all other title endorsements desired by Buyer. Buyer and Seller shall each bear their own respective legal and accounting costs, if any, outside of Escrow. All recording costs or fees shall be paid by Seller. All other costs or expenses not otherwise provided for in this Agreement shall be apportioned or allocated between Buyer and Seller in the manner customary in the County where the Property is located.

4.6.2 Ground Rent, Property Taxes and Assessments. Rent payable under the Lease shall be prorated through Escrow between Buyer and Seller as of the Close of Escrow. All general and special real property taxes, bonds and assessments with respect to the Property or any portion thereof, including, without limitation, any and all assessments with respect to any applicable assessment districts, shall not be prorated since Buyer is responsible for payment of such items pursuant to the Lease.

4.6.3 Supplemental Property Taxes. With respect to any supplemental taxes assessed against any portion of the Property, pursuant to California Revenue and Taxation Code Section 75, et seq., Buyer and Seller hereby agree between themselves that Buyer shall be obligated to pay all such supplemental taxes assessed against the Property. The obligations set forth in this paragraph shall survive the Close of Escrow for all purposes.

4.7 IRS Reporting Responsibilities. Any returns, statements or reports required to be filed under Section 6045(e) of the Internal Revenue Code of 1986 (or any similar reports required by state or local law) relating to the Property shall be filed by Escrow Holder, including, without limitation, form 1099-S to be filed with the Internal Revenue Service. In no event shall this Agreement be construed so as to require that such returns, reports or statements be filed by Buyer or Buyer's counsel, or by Seller or Seller's counsel. Escrow Holder shall provide evidence to Buyer and Seller of its compliance with the provisions of this Section 4.7.

#### 5. SELLER'S REPRESENTATIONS AND WARRANTIES.

Seller hereby makes the following continuing representations, warranties and covenants to Buyer:

5.1 Seller's Authority. The Austin Barnard Trust and the Mary Barnard Trust are trusts, validly existing pursuant to the laws of the State of California, and Wells Fargo, as a co-trustee of each trust, has the capacity and full power and authority to enter into and carry out the agreements contained in, and the transactions contemplated by, this Agreement. Seller is the sole owner in fee simple absolute of the Property. Seller has not alienated, encumbered, transferred, leased, assigned or otherwise conveyed its interest in the Property or any portion thereof, nor entered into any Agreement to do so, nor shall Seller do so during the term of this Agreement. This Agreement has been duly authorized and executed by the Austin Barnard Trust and the Mary Barnard Trust. Upon delivery to and execution by Buyer, this Agreement shall be a valid and binding agreement of Seller.

5.2 Legal Actions. To Seller's actual knowledge, Seller has not been served with process for any suit, action or arbitration, or legal, administrative, or other proceeding or governmental investigation, formal or informal, which adversely affects Seller's ability to perform hereunder.

5.3 Bankruptcy. Seller is not bankrupt or insolvent under any applicable Federal or state standard, has not filed for protection or relief under any applicable bankruptcy or creditor protection statute and has not been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute.

Each of the representations and warranties made by Seller in this Agreement, or in any exhibit, or on any document or instrument delivered pursuant hereto shall be continuing representations and warranties which shall be true and correct in all material respects on the date hereof, and shall be deemed to be made again as and at the date of the Close of Escrow. Seller shall immediately notify Buyer of any fact or circumstance which becomes known to Seller which would make any of the foregoing representations or warranties contained in this Section 5 untrue or incorrect. If prior to the Close of Escrow Buyer becomes aware of any fact or circumstance that could render Seller's representations and warranties untrue or incorrect, Buyer shall immediately disclose such fact to Seller and Buyer shall have the right to either (i) terminate this Agreement or (ii) waive such item and proceed to the Close of Escrow, and the Close of Escrow shall be deemed to be Buyer's unconditional waiver and acceptance of any and all such facts or circumstances.

## 6. BUYER'S REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants to Seller as follows:

6.1 Buyer's Authority. Buyer is a California limited liability company, duly formed and validly existing in the State of California, and has the capacity and full power and authority to enter into and carry out the agreements contained in, and the transactions contemplated by, this Agreement, and that this Agreement has been duly authorized and executed by Buyer and, upon delivery to and execution by Seller, shall be a valid and binding Agreement of Buyer.

6.2 Bankruptcy. Buyer and any entity or person that owns or controls Buyer are not bankrupt or insolvent under any applicable Federal or state standard, have not filed for protection or relief under any applicable bankruptcy or creditor protection statute and have not been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute.

6.3 AS IS. Neither Seller nor any advisor, officer, director, trustee, beneficiary, member, employee, agent, attorney or contractor thereof or therefor (individually and collectively, the "Seller Parties") is making or shall be deemed to have made any express or implied representation or warranty of any kind or nature as to the Property or the transactions contemplated in this Agreement, including, without limitation (i) the nature, physical or environmental condition, safety or any other aspect of the Property or the Property's compliance with applicable laws, ordinances, rules and regulations, including, without limitation, zoning ordinances and environmental, hazardous material and endangered species statutes, (ii) the accuracy or completeness of any information or data provided or to be provided by Seller Parties, including, without limitation, copies of any reports or documents prepared for Seller Parties whether by third parties or otherwise which may be included with such information, (iii) the fitness of the Property for its intended use; or (iv) any other matter relating to the Property or Seller. Without limiting the foregoing, Buyer hereby acknowledges that the Property will be sold to Buyer "AS IS", "WHERE IS" and "WITH ALL FAULTS" and there are no representations and/or warranties, express or implied, made by Seller Parties in connection with the Property or the transactions contemplated in this Agreement. Buyer acknowledges and agrees that Buyer is the current lessee of the Property pursuant to the Lease, is currently in possession of the Property and is willing to accept the Property on an "As Is" basis and shall assume the full risk of any loss or damage occasioned by any fact, circumstance, condition or defect pertaining to the Property after the Close of Escrow.

6.4 Release. At Closing, Buyer shall assume the risk that adverse matters, including but not limited to, adverse physical, environmental, Hazardous Substances, endangered species, zoning, access or water course issues or conditions, may not have been revealed by Buyer's investigations. Buyer releases all Seller Parties from, and waives any and all liability, claims, demands, damages and costs (including attorneys' fees and expenses) of any and every kind or character, known or unknown, for, arising out of, or attributable to, any latent or patent issue or condition at the Property, including without limitation, claims, liabilities and contribution rights relating to the acts and omissions of the Seller Parties. It is the intention of the parties that the foregoing release shall be effective with respect to all matters, past and present, known and unknown, suspected and unsuspected. "Hazardous Substances" shall mean any substance, material, waste, contaminant or pollutant determined by any local, regional, state or federal governmental agency, court, judicial or quasi-judicial body or legislative or quasi-legislative body pursuant to any Environmental Laws to be hazardous, toxic, infectious, radioactive, ignitable to flammable, corrosive, persistent or bioaccumulative, explosive, reactive or otherwise dangerous. "Environmental Laws shall mean any law or regulation applicable thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 et seq.), the Clean Water Act (33 U.S.C. Sections 466 et seq.), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transaction Act (49 U.S.C. Sections 1801 et seq.), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Substances Act (Health & Safety Code Sections 25100-25600), the California Portor-Cologne Water Quality Control Act (Water Code Sections 1300 et seq.), and all regulations, rulings, and orders promulgated or adopted pursuant thereto. Buyer realizes and acknowledges that factual matters now unknown to it may have given or may hereafter give rise to losses, damages, liabilities, costs and expenses which are presently unknown, unanticipated and unsuspected, and Buyer further agrees that the waivers and releases herein have been negotiated and agreed upon in light of that realization and that Buyer nevertheless hereby intends to release, discharge and acquit Seller and the other Seller Parties from any such unknown losses, damages, liabilities, costs and expenses. In furtherance of this intention, the Buyer hereby expressly waives any and all rights and benefits conferred upon it by the provisions of California Civil Code Section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."

The Buyer acknowledges that the foregoing acknowledgments, releases and waivers including without limitation the waiver of the provisions of California Civil Code Section 1542 were expressly bargained for in exchange for Seller's performance hereunder.

\_\_\_\_\_  
Buyer Initials

Each of the representations and warranties made by Buyer in this Agreement, or in any exhibit or on any document or instrument delivered pursuant hereto, shall be continuing representations and warranties which shall be true and correct in all material respects on the date hereof, and shall be deemed to be made again as of the Close of Escrow. Buyer shall immediately notify Seller of any fact or circumstance which becomes known to Buyer which would make any of the foregoing representations and warranties contained in this Section 6 untrue or incorrect.

## 7. DEFAULT

7.1 Buyer's Default. In the event that Escrow shall fail to close by reason of a Buyer default, Seller may, at Seller's option, terminate this Agreement and the Escrow by giving written notice to Buyer and Escrow Holder. upon receipt of such notice, the escrow shall be cancelled. In such event, the Lease shall continue in existence and the Option to Purchase set forth in Article XIV of the Lease shall be null and void. In such event Buyer shall also be responsible for payment all costs and expenses of

incurred by Buyer or for which Buyer is responsible in connection with this Agreement and the exercise of the Option to Purchase the Property, including, without limitation, (1) any charges incurred for escrow and title cancellation fees, (2) appraisal charges in connection with the determination of the Purchase Price and (3) attorneys' fees, costs and expenses in connection with this transaction.

7.2 Seller's Default. In the event of a Seller Default, Buyer shall have the following remedies against Seller by reason thereof: (a) the right to terminate this Agreement and receive any actual damages that may be suffered by Buyer by reason thereof but without any right to recover any consequential or punitive damages arising from a Seller Default, or (b) in the alternative, the right to sue Seller for specific performance of Seller's obligations under this Agreement.

#### 8. BROKER'S COMMISSION

Seller and Buyer each represents to the other that no brokerage commission, finder's fee or other compensation of any kind is due or owing to any person or entity in connection with the transactions covered by this Agreement. Each party agrees to and does hereby indemnify and hold the other free and harmless from and against any and all costs, liabilities, losses, damages, claims, causes of action or proceedings (including reasonable attorneys' fees) which may result from any other broker, agent or finder, licensed or otherwise, claiming through, under or by reason of the conduct of the indemnifying party in connection with this transaction.

#### 9. MISCELLANEOUS

9.1 Assignment. Each party hereto shall not voluntarily or by operation of law assign or transfer any right, interest or obligation hereunder without the other party's express prior written consent, which consent may be given or withheld by the other party in its reasonable discretion.

9.2 Attorneys' Fees. If any legal action is instituted between Seller and Buyer in connection with this Agreement, then the prevailing party shall be entitled to recover from the other party all of such prevailing party's costs and expenses, including court costs and reasonable attorneys' and expert witness' fees.

9.3 Notices. All notices, requests, demands, and other communications required or permitted under this Agreement shall be in writing (including telefax communications) and shall be (as elected by the person giving such notice) hand delivered by messenger or sent by overnight courier service, or sent by telefax transmission, addressed as follows:

If to Seller, to:

C/O Wells Fargo Bank, N.A., Trustee for  
The Austin M. Barnard Residuary Trust and The Mary E.  
Barnard Residuary Trust  
Wells Fargo Private Client Services  
444 South Flower Street  
Suite 1360  
Los Angeles, CA 90071  
Attention: Noreen R. Sadler, V.P. and Senior Asset Manager  
Telephone No.: (213) 688-2975  
Facsimile No.: (213) 892-1043

With a copy to

Cox, Castle & Nicholson LLP  
2049 Century Park East, 28th Floor  
Los Angeles, California 90067-3284  
Attention: Ira J. Waldman, Esq.  
Telephone No.: (310) 277-4222  
Facsimile No.: (310) 277-7889

If to Buyer, to:

Big Oak Investments 2, LLC  
P.O. Box 783  
Kentfield, CA 94914  
Facsimile No.: (415) 461-2791

And to:

Lawrence Edelman  
130 San Aleso Avenue  
San Francisco, California 94127  
Telephone No.: (415) 334-6836  
Facsimile No.: (415) 239 5297

Each notice shall be deemed given (i) on the date delivered if by personal delivery or by overnight courier service, (ii) on the date of transmission with confirmed good transmission if by telefax or, if given after normal business hours, on the next Business Day, or (iii) upon receipt or the expiration of three (3) Business Days, whichever is earlier, if by regular mail. By giving to the other parties at least ten (10) Business Days' written notice, the parties to this Agreement and their respective successors and assigns shall have the right from time to time, and at any time during the term of this Agreement, to change their respective addresses and each shall have the right to specify as its address any other address within the State.

9.4 Waiver, Consent and Remedies. Either party may specifically and expressly waive in writing any breach by the other party of any provision of this Agreement, but no such waiver shall constitute a further or continuing waiver of any preceding or succeeding breach of the same or any other provision. The consent by one party to any act by the other for which such consent was required shall not be deemed to imply consent or waiver of the necessity of obtaining such consent for the same or any similar acts in the future. No waiver or consent shall be implied from silence or any failure of a party to act, except as otherwise specified in this Agreement.

9.5 Survivability. All covenants and indemnities of Buyer or Seller which are intended hereunder to be performed in whole or in part after a Closing, shall survive such Closing, subject to any limitation on the period of time of such survival specified herein, and be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and assigns.

9.6 Further Documents and Acts. Each of the parties hereto agrees to cooperate in good faith with each other, and to execute and deliver such further documents and perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions contemplated under this Agreement.

9.7 Gender and Name. In this Agreement (unless the context requires otherwise), the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

9.8 Entire Agreement. This Agreement and its exhibits constitute the entire agreement between the parties hereto pertaining to the subject matter hereof, and the final, complete and

exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understandings of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein.

9.9 Natural Hazard Disclosure. Seller shall deliver to Buyer, and Buyer shall acknowledge receipt of a Property Risk Natural Hazard Disclosure Report prior to the Closing. If the Closing occurs prior to delivery of such Report, Buyer shall be deemed to have waived such delivery. Buyer acknowledges and agrees that Buyer knowingly and intentionally otherwise waives any disclosures, obligations or requirements of Seller with respect to Natural Hazards, including, without limitation, any disclosure obligations or requirements under Government Code Sections 8589.4; 8589.3; Government Code Sections 51183.4, 51183.5 (Fire Hazard Severity Zone); Public Resource Code Section 2621.9 (Earthquake Fault Zone); Public Resource Code Section 2694 (Seismic Hazard Zone); and Public Resource Code Section 4136 (Wildland Area or under California Civil Code section 1102.

9.10 Captions. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

9.11 Time of Essence. Time is of the essence of every provision of this Agreement in which time is an element.

9.12 Governing Law. This Agreement and the exhibits attached hereto have been negotiated and executed in the State of California and shall be governed by and construed in accordance with the laws of the State of California.

9.13 Invalidity of Provision. If any provision of this Agreement as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect (to the maximum extent permissible by law) any other provision of this Agreement, the application of any such provision under circumstances different from those adjudicated by the court, or the validity or enforceability of the Agreement as a whole; provided that the invalidity or unenforceability of such provision does not materially and adversely affect the benefits accruing to, or the obligations imposed upon, any party hereunder.

9.14 Amendments. No addition to or modification of any provision contained in this Agreement shall be effective unless fully set forth in writing by both Buyer and Seller.

9.15 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

9.16 Exhibits. All exhibits to this Agreement are incorporated herein by this reference as though fully set forth in the body hereof.

9.17 Time References. Any references in this Agreement to time for performance of obligations or elapsed time shall mean consecutive calendar days, months, or years, as applicable, unless otherwise explicitly indicated herein. In the event that the day on which Buyer or Seller is required to take any action under the terms of this Agreement is not a Business Day, such action shall be taken on the next succeeding Business Day. Any notices received by a party after 5:00 p.m. on the day in question shall be deemed received on the next Business Day. Whenever notice, approval or disapproval must be given to Escrow Holder and Escrow Holder is closed on the last day for taking such action, then the parties shall have until 5:00 p.m. on the first following day Escrow Holder is open to take such action.

9.18 Construction of Agreement. The agreements contained herein shall not be construed in favor of or against either party, but shall be construed as if both parties prepared this Agreement.

9.19 Binding Effect. This Agreement shall be binding only upon its execution and delivery by both Seller and Buyer.

9.20 Construction of Agreement. The agreements contained herein shall not be construed in favor of or against either party, but shall be construed as if both parties prepared this Agreement.

9.21 Facsimile Signatures. Signatures delivered by facsimile shall be as binding as originals upon the parties so signing and delivering.

9.22 Section 1031 Exchange. Subject to the terms and conditions of this Section 9.22, Buyer agrees to cooperate with Seller in effecting for the benefit of Seller a delayed like-kind exchange of real property pursuant to Section 1031 of the United States Internal Revenue Code and similar provisions of applicable state law ("**Section 1031**"), provided that (i) Buyer shall incur no additional costs, expenses or liabilities as a result of, or in connection with, the exchange; (ii) Buyer shall not be required to take title to any real or personal property other than the Property; and (iii) the closing of the escrow for the sale of the Property to Buyer shall not be delayed as a result of the exchange but shall occur within the time period contemplated by this Agreement. Seller and Buyer agree that the Close of the Escrow relating to the purchase and sale of the Property is not conditioned on the simultaneous or delayed consummation of the exchange for the benefit of Seller. Notwithstanding anything to the contrary contained herein, Seller acknowledges that (i) Buyer is entering into this Section strictly as an accommodation to Seller and Buyer is making no representations or warranties, and is not assuming any obligation or liability whatsoever, with respect to the qualification of the transactions contemplated herein for the tax benefits provided under Section 1031 of the United States Internal Revenue Code and similar provisions of applicable state law.

9.23 Exculpation of Wells Fargo Bank, N.A. . It is understood and agreed by Buyer that Wells Fargo Bank, N.A. is executing this agreement in its fiduciary capacity only and Wells Fargo Bank, N.A., in all capacities, and Wells Fargo Bank, N.A.'s affiliates, shareholders, officers, directors, employees and agents are not and shall not be liable hereunder, directly or indirectly, except for willful misconduct, under or by execution of this Agreement. The rights and claims of Buyer as against Wells Fargo Bank, N.A., in any capacity, shall be limited exclusively to such rights as Buyer may have against the trust or other estate or entity represented herein by Wells Fargo Bank, N.A. Any liability of Wells Fargo Bank, N.A., in any capacity (including without limitation Wells Fargo Bank, N.A.'s shareholders, officers, directors, affiliates, agents, and employees) to Buyer or any other person shall be limited to the estate of the trust or other estate or entity represented herein by Wells Fargo Bank, N.A. in the Property. Buyer or any other person claiming through Buyer agrees to look solely to such interest for the recovery of any judgment against Wells Fargo Bank, N.A., in any capacity. It is the intent of the parties that neither (a) such trust or other estate or entity represented herein by Wells Fargo Bank, N.A., (b) its trustees or beneficiaries, nor (c) any other assets of such trust or other estate or entity represented herein by Wells Fargo Bank, N.A. or its trustees or beneficiaries shall be liable for any such judgment.

9.24 Execution by Austin B. Whitney. Notwithstanding execution of this Agreement by Austin B. Whitney, the ability of Austin B. Whitney to consummate the Closing is subject to receipt of the Bankruptcy Court Order.

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the day and year first above written.

"BUYER"

BIG OAK INVESTMENTS 2, LLC, a California limited liability company

"SELLER"

WELLS FARGO BANK, N.A., AS CO-TRUSTEE FOR THE AUSTIN M. BARNARD RESIDUARY TRUST

By: \_\_\_\_\_  
Name: Lawrence Edelman  
Its: Manager Member

By: \_\_\_\_\_  
Name: Liliane Bien  
Its: Manager Member

By: \_\_\_\_\_  
Name: Ralph Bien  
Its: Manager Member

By: \_\_\_\_\_  
Name: Stuart Schweitzer  
Its: Manager Member

By: \_\_\_\_\_  
Name: Suzanne Schweitzer  
Its: Manager Member

By: \_\_\_\_\_  
Name: Helene Edelman  
Its: Manager Member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
**PATRICIA WHITNEY, AS CO-TRUSTEE FOR  
THE AUSTIN M. BARNARD RESIDUARY TRUST**

\_\_\_\_\_  
**JACK D. BARNARD, AS CO-TRUSTEE FOR THE  
AUSTIN M. BARNARD RESIDUARY TRUST**

\_\_\_\_\_  
**AUSTIN B. WHITNEY**

\_\_\_\_\_  
**ANNABELLAC. WHITNEY**

\_\_\_\_\_  
**RANDOLPH J. BARNARD**

\_\_\_\_\_  
**MARILYN J. HARDING**

\_\_\_\_\_  
**JACK D. BARNARD, JR., . AS TRUSTEE OF THE  
JACK D. BARNARD, JR. TRUST, A  
REVOCABLE LIVING TRUST DATED JULY 11,  
1995**

\_\_\_\_\_  
**TIMOTHY B. WHITNEY**

\_\_\_\_\_  
**CHARLES. C. BARNARD**

**WELLS FARGO BANK, N.A., AS CO-TRUSTEE  
FOR THE MARY E. BARNARD RESIDUARY  
TRUST**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
**AUSTIN B. WHITNEY, AS CO-TRUSTEE FOR  
THE MARY E. BARNARD RESIDUARY TRUST**

LIST OF EXHIBITS

Exhibit "A"	Legal Description of Property
Exhibit "B"	Grant Deed

**CONSENT**

First American Title Insurance Company, the Escrow Holder under this Agreement, hereby agrees to (i) accept the foregoing Agreement, (ii) be Escrow Agent under the Agreement, and (iii) be bound by the Agreement in the performance of its duties as Escrow Agent. Pursuant to Section 2 of the Agreement, \_\_\_\_\_ March \_\_, 2006 is the date of the Opening of Escrow and the Escrow Number for this transaction is \_\_\_\_\_.

Date: \_\_\_\_\_

First American Title Insurance Company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

The southeasterly 55 feet of Lot 3, measured along the southwesterly line thereof in Block 11 of San Vicente Park, in the City of Los Angeles, in the County of Los Angeles, State of California, as per map recorded in Book 12, Pages 62 and 63 of Maps, in the office of the County Recorder of said County.

**EXHIBIT B**

**GRANT DEED**

RECORDING REQUESTED BY

AND WHEN RECORDED RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**GRANT DEED**

See separate declaration per Revenue and Taxation Code Section 11932

THE UNDERSIGNED GRANTOR DECLARES:

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

WELLS FARGO BANK, N.A., ("Wells Fargo"), PATRICIA WHITNEY AND JACK D. BARNARD, AS CO-TRUSTEES FOR THE AUSTIN M. BARNARD RESIDUARY TRUST CREATED UNDER THE WILL OF AUSTIN M. BARNARD, DECEASED, IN SANTA BARBARA COUNTY SUPERIOR COURT CASE NO. 98487, AS TO AN UNDIVIDED 34.84709%, AUSTIN B. WHITNEY, AS TO AN UNDIVIDED ONE-EIGHTH INTEREST IN AN UNDIVIDED 65.15291% INTEREST, ANNABELLA C. WHITNEY, AS TO AN UNDIVIDED ONE-EIGHTH INTEREST IN AN UNDIVIDED 65.15291% INTEREST, RANDOLPH J. BARNARD, AS TO AN UNDIVIDED ONE-EIGHTH INTEREST IN AN UNDIVIDED 65.15291% INTEREST, MARILYN J. HARDING, AS TO AN UNDIVIDED ONE-EIGHTH INTEREST IN AN UNDIVIDED 65.15291% INTEREST, JACK D. BARNARD, JR., AS TRUSTEE OF THE JACK D. BARNARD, JR. TRUST, A REVOCABLE LIVING TRUST DATED JULY 11, 1995, AS TO AN UNDIVIDED ONE-FOURTH INTEREST IN AN UNDIVIDED 65.15291% INTEREST, TIMOTHY B. WHITNEY, AS TO AN TWO/TWENTY-FOURTHS INTEREST IN AN UNDIVIDED 65.15291% INTEREST, CHARLES C. BARNARD, AS TO AN TWO/TWENTY-FOURTHS INTEREST IN AN UNDIVIDED 65.15291% INTEREST AND AN UNDIVIDED .027147 INTERST IN AN UNDIVIDED 65.15291% INTEREST AND WELLS FARGO AND AUSTIN B. WHITNEY, AS CO-TRUSTEES FOR THE MARY E. BARNARD RESIDUARY TRUST CREATED UNDER THE WILL OF MARY E. BARNARD, DECEASED, IN SANTA BARBARA COUNTY SUPERIOR COURT CASE NO. 143009 (THE "MARY BARNARD TRUST"), AS TO THE REMAINDER INTEREST IN AN UNDIVIDED 65.15291% INTEREST

hereby GRANT(S) to:

**BIG OAK INVESTMENTS 2, LLC**, a California limited liability company

The real property in Los Angeles County, California, more particularly set forth on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

SUBJECT TO: Non-delinquent real property taxes and assessments and all other covenants, conditions, restrictions, reservations, rights, rights of way, easements, encumbrances, liens and title matters whether

or not of record or visible from an inspection of the Property, interests of parties in possession, and all matters which an accurate survey of the Property would disclose.

Dated: \_\_\_\_\_

**WELLS FARGO BANK, N.A., AS CO-TRUSTEE  
FOR THE AUSTIN M. BARNARD RESIDUARY  
TRUST CREATED UNDER THE WILL OF  
AUSTIN M. BARNARD, DECEASED, IN SANTA  
BARBARA COUNTY SUPERIOR COURT CASE  
NO. 98487**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Dated: \_\_\_\_\_

**PATRICIA WHITNEY, AS CO-TRUSTEE FOR  
THE AUSTIN M. BARNARD RESIDUARY TRUST,  
CREATED UNDER THE WILL OF AUSTIN M.  
BARNARD, DECEASED, IN SANTA BARBARA  
COUNTY SUPERIOR COURT CASE NO. 98487**

Dated: \_\_\_\_\_

**JACK D. BARNARD, AS CO-TRUSTEE FOR THE  
AUSTIN M. BARNARD RESIDUARY TRUST,  
CREATED UNDER THE WILL OF AUSTIN M.  
BARNARD, DECEASED, IN SANTA BARBARA  
COUNTY SUPERIOR COURT CASE NO. 98487**

Dated: \_\_\_\_\_

**AUSTIN B. WHITNEY**

Dated: \_\_\_\_\_

**ANNABELLA C. WHITNEY**

Dated: \_\_\_\_\_

**RANDOLPH J. BARNARD**

Dated: \_\_\_\_\_

\_\_\_\_\_  
MARILYN J. HARDING

Dated: \_\_\_\_\_

\_\_\_\_\_  
JACK D. BARNARD, JR., AS TRUSTEE OF THE  
JACK D. BARNARD, JR. TRUST, A  
REVOCABLE LIVING TRUST DATED JULY 11,  
1995

Dated: \_\_\_\_\_

\_\_\_\_\_  
TIMOTHY B. WHITNEY

Dated: \_\_\_\_\_

\_\_\_\_\_  
CHARLES. C. BARNARD

WELLS FARGO BANK, N.A., AS CO-TRUSTEE  
FOR THE MARY E. BARNARD RESIDUARY  
TRUST, CREATED UNDER THE WILL OF MARY  
E. BARNARD, DECEASED, IN SANTA  
BARBARA COUNTY SUPERIOR COURT CASE  
NO. 143009

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
AUSTIN B. WHITNEY, AS CO-TRUSTEE FOR  
THE MARY E. BARNARD RESIDUARY TRUST,  
CREATED UNDER THE WILL OF MARY E.  
BARNARD, DECEASED, IN SANTA BARBARA  
COUNTY SUPERIOR COURT CASE NO. 143009

STATE OF CALIFORNIA            )  
  )  
COUNTY OF \_\_\_\_\_        )

On \_\_\_\_\_, 2006 before me, \_\_\_\_\_ (here insert name of the officer), Notary Public, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)

**STATEMENT OF DOCUMENTARY TRANSFER TAX DUE**  
(DO NOT RECORD)

This separate declaration is being made in accordance with Revenue and Taxation Code Section 11932. The undersigned Grantor requests that this Statement of Documentary Transfer Tax due not be recorded with the attached deed but be affixed to the deed after recordation and returned with the conveying document after permanent record is made.

ASSESSOR'S PARCEL NUMBER(S): 4264-26-32

GRANTOR: WELLS FARGO BANK, N.A., ("Wells Fargo"), PATRICIA WHITNEY AND JACK D. BARNARD, AS CO-TRUSTEES FOR THE AUSTIN M. BARNARD RESIDUARY TRUST CREATED UNDER THE WILL OF AUSTIN M. BARNARD, DECEASED, IN SANTA BARBARA COUNTY SUPERIOR COURT CASE NO. 98487, AS TO AN UNDIVIDED 34.84709%, AUSTIN B. WHITNEY, AS TO AN UNDIVIDED ONE-EIGHTH INTEREST IN AN UNDIVIDED 65.15291% INTEREST, ANNABELLA C. WHITNEY, AS TO AN UNDIVIDED ONE-EIGHTH INTEREST IN AN UNDIVIDED 65.15291% INTEREST, RANDOLPH J. BARNARD, AS TO AN UNDIVIDED ONE-EIGHTH INTEREST IN AN UNDIVIDED 65.15291% INTEREST, MARILYN J. HARDING, AS TO AN UNDIVIDED ONE-EIGHTH INTEREST IN AN UNDIVIDED 65.15291% INTEREST, JACK D. BARNARD, JR., AS TRUSTEE OF THE JACK D. BARNARD, JR. TRUST, A REVOCABLE LIVING TRUST DATED JULY 11, 1995, AS TO AN UNDIVIDED ONE-FOURTH INTEREST IN AN UNDIVIDED 65.15291% INTEREST, TIMOTHY B. WHITNEY, AS TO AN TWO/TWENTY-FOURTHS INTEREST IN AN UNDIVIDED 65.15291% INTEREST, CHARLES C. BARNARD, AS TO AN TWO/TWENTY-FOURTHS INTEREST IN AN UNDIVIDED 65.15291% INTEREST AND AN UNDIVIDED .027147 INTEREST IN AN UNDIVIDED 65.15291% INTEREST AND WELLS FARGO AND AUSTIN B. WHITNEY, AS CO-TRUSTEES FOR THE MARY E. BARNARD RESIDUARY TRUST CREATED UNDER THE WILL OF MARY E. BARNARD, DECEASED, IN SANTA BARBARA COUNTY SUPERIOR COURT CASE NO. 143009, AS TO THE REMAINDER INTEREST IN AN UNDIVIDED 65.15291% INTEREST

GRANTEE: BIG OAK INVESTMENTS 2, LLC, a California limited liability company

The undersigned declares that the documentary transfer tax is \$ \_\_\_\_\_

- computed on the full value of the Property conveyed, or is
- computed on the full value less the value of liens or encumbrances remaining thereon at the time of sale

The land, tenements or realty is located in

- in the County of Los Angeles, or
- the City of Los Angeles

Dated: \_\_\_\_\_

**"GRANTOR"**

**WELLS FARGO BANK, N.A., AS CO-TRUSTEE  
FOR THE AUSTIN M. BARNARD RESIDUARY  
TRUST CREATED UNDER THE WILL OF  
AUSTIN M. BARNARD, DECEASED, IN SANTA  
BARBARA COUNTY SUPERIOR COURT CASE  
NO. 98487**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

\_\_\_\_\_  
**PATRICIA WHITNEY, AS CO-TRUSTEE FOR  
THE AUSTIN M. BARNARD RESIDUARY TRUST,  
CREATED UNDER THE WILL OF AUSTIN M.  
BARNARD, DECEASED, IN SANTA BARBARA  
COUNTY SUPERIOR COURT CASE NO. 98487**

\_\_\_\_\_  
**JACK D. BARNARD, AS CO-TRUSTEE FOR THE  
AUSTIN M. BARNARD RESIDUARY TRUST,  
CREATED UNDER THE WILL OF AUSTIN M.  
BARNARD, DECEASED, IN SANTA BARBARA  
COUNTY SUPERIOR COURT CASE NO. 98487**

\_\_\_\_\_  
**AUSTIN B. WHITNEY**

\_\_\_\_\_  
**ANNABELLA C. WHITNEY**

\_\_\_\_\_  
**RANDOLPH J. BARNARD**

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**MARILYN J. HARDING**

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**JACK D. BARNARD, JR., AS TRUSTEE OF THE  
JACK D. BARNARD, JR. TRUST, A  
REVOCABLE LIVING TRUST DATED JULY 11,  
1995**

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**TIMOTHY B. WHITNEY**

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**CHARLES. C. BARNARD**

**WELLS FARGO BANK, N.A., AS CO-TRUSTEE  
FOR THE MARY E. BARNARD RESIDUARY  
TRUST, CREATED UNDER THE WILL OF MARY  
E. BARNARD, DECEASED, IN SANTA  
BARBARA COUNTY SUPERIOR COURT CASE  
NO. 143009**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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**AUSTIN B. WHITNEY, AS CO-TRUSTEE FOR  
THE MARY E. BARNARD RESIDUARY TRUST,  
CREATED UNDER THE WILL OF MARY E.  
BARNARD, DECEASED, IN SANTA BARBARA  
COUNTY SUPERIOR COURT CASE NO. 143009**

EXHIBIT A TO GRANT DEED

LEGAL DESCRIPTION OF PROPERTY

The southeasterly 55 feet of Lot 3, measured along the southwesterly line thereof in Block 11 of San Vicente Park, in the City of Los Angeles, in the County of Los Angeles, State of California, as per map recorded in Book 12, Pages 62 and 63 of Maps, in the office of the County Recorder of said County.